IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7395 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH NATVARBHAI @ BURYIO RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 13.4.2000 Annexure : A passed by Respondent No.1 which he has passed in exercise of powers

conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on one Prohibition case registered vide CR.No.201/2000 in Vapi Police Station against the detenu. He also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of said two witnesses on 29th March, 2000 and 31st March, 2000 respectively and he passed an order of detention on 7th April, 2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. At the outset of his arguments, Shri Patel, the learned advocate for the petitioner has argued that the respondent no.1 who is a Police Commissioner, Surat City had no jurisdiction to pass an order of detention because detenu is residing at Bardoli in Surat District, and therefore, at the best, the District Magistrate of Surat District can pass an order of detention. He has further argued that prohibition case which has been lodged against the detenu was lodged in Vapi Police Station, and therefore, if District Magistrate, Valsad really wants to pass detention order on the basis of that case, District Magistrate, Valsad can pass that order. Therefore, this is clear cut case of non-application of mind of respondent no.1 who had no jurisdiction to pass order of detention in exercise of powers conferred upon him under Sec.3(2) of the Act, and therefore, prima facie, order challenged in this writ petition is illegal and bad in law, and therefore, the same requires to be quashed and set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 13/4/2000 passed by Respondent no.1 which is at Annexure:A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not

required to detain further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 4.10.2000. (H.H.MEHTA,J.)
ccshah